

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Explanatory Memorandum for the “Draft Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilisation of Transmission Assets for Other Business) Regulations, 2019”

1. Background

1.1. Section 41 of the Electricity Act, 2003 provides that a transmission licensee can utilise its transmission assets for other business and share proportion of revenue for reduction of transmission charges. For such business, the Commission is required to determine the proportion of the revenues towards reduction of transmission charges. The relevant provision is extracted below:

“Section 41. (Other business of transmission licensee):

A transmission licensee may, with prior intimation to the Appropriate Commission, engage in any business for optimum utilisation of its assets:

Provided that a proportion of the revenues derived from such business shall, as may be specified by the Appropriate Commission, be utilised for reducing its charges for transmission and wheeling:

Provided further that the transmission licensee shall maintain separate accounts for each such business undertaking to ensure that transmission business neither subsidises in any way such business undertaking nor encumbers its transmission assets in any way to support such business:

Provided also that no transmission licensee shall enter into any contract or otherwise engage in the business of trading in electricity:”

1.2 Clause (1) of Section 178 of the Act further empowers the Commission to make regulations consistent with the provisions of the Act and the rules. In exercise of the powers vested under Section 178 of the Act, regulatory framework for the sharing of revenue derived from utilisation of transmission assets for other business was notified vide Central Electricity Regulatory Commission (Sharing of Revenue derived from utilisation of transmission assets for other business) Regulations,

2007 (herein referred to as “the 2007 Regulations”) on 27th December, 2007.

2. Need for Review

2.1. The regulatory framework in the 2007 Regulations provides for sharing of revenue for utilization of transmission assets for Telecom business and also for business other than Telecom business. The Commission had specified the sharing of revenue of Rs.3000/- from Telecom business. While specifying the 2007 Regulations, the Commission in its decision dated 27th December, 2007 under Petition no 54/2005 held that the rate of sharing revenue from telecom business may be reviewed after gaining some experience. Relevant Para is extracted below:

“19..... In such an approach, the revenue sharing cannot be graded. While Power Grid Corporation of India Ltd has represented that the rate of Rs. 3000 per km per year is too high, we have been made to understand that it is already paying to some State utilities at around this rate for laying optical fibre cables on the latter’s transmission lines. We feel that the proposed rate is reasonable, at least to start with. The Commission would not like to introduce subjectivity in the matter in the name of retaining flexibility. However, we would like to state that the Commission may review the matter after gaining some experience on the issue, and may revise the rate and/or approach subsequently after taking into account the experience gained on the working of the regulations proposed to be notified.” (Emphasis supplied)

2.2. In the Consultation paper on Terms and Conditions of Tariff Regulations for tariff period, 2019-24 issued on 24th May 2018, need for review of the rate of sharing revenue from telecom business was reiterated. Para 31.2 of the Consultation paper is reproduced as follows:

“Presently, the revenue from telecom business is adjusted at the rate of Rs 3000/- per KM, which was fixed in 2007. It may need review”.

In response, stakeholders have suggested various approaches for sharing of revenue earned from the Telecom business. Summary of comments is given in *Annexure-A*.

2.3. The Commission, in its order dated 5th October, 2018 in case of BSES Rajdhani versus Powergrid Corporation of India Ltd in Petition No. 215/MP/2018 (*Supra*) dated 5th October 2018, observed that the issue of sharing of revenue for telecommunication and other business from the utilization of the transmission assets will be dealt during the preparation of Tariff Regulations 2019-24. Relevant Para is extracted below:

“It is pertinent to note that the issue of sharing of revenue for telecommunication and other business from the utilization of the transmission assets has been flagged in the Approach Paper for the Tariff period 2019-24. The Commission is in the process of preparation and publication of the Draft Tariff Regulations for the period 2019-24 in which necessary provision will be made.”

2.4. In light of the above, the Commission has reviewed existing framework for sharing of revenue from other business derived from utilization of the transmission assets. Accordingly, the Commission has proposed draft Central Electricity Regulatory Commission (Sharing of Revenue derived from utilisation of transmission assets for other business) Regulations, 2019 (hereafter referred to as “Draft Regulations”).

3. Regulation 1. Short title, extent and commencement

3.1. The Commission is of the view that this Regulation should be applicable to the transmission licensee whose tariff is governed either under Section 62 or under Section 63 of Act. Accordingly, clause (2) of Regulation 1 of Draft Regulations is proposed as follows:

“(2) These regulations shall be applicable to the inter-State transmission licensees, whose transmission charges is determined by the Commission under Section 62 of the Act or adopted by the Commission under Section 63 of the Electricity Act, 2003.”

4. Regulation 2. Definitions and interpretation

4.1. Definitions of “Commission” and “transmission licensee” have been linked with the definition provided under the Act. Further, definition of

“Long Term Customers” has been defined under the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 and same has been referred in the proposed definition of clause (3) of Regulation 2 of the Draft Regulations. Similarly, definition of “Operations and Maintenance Expenses” or “O&M expenses” has been linked with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019.

4.2. The Current Regulations provide for sharing of revenue with the beneficiaries of the assets of the transmission licensees. However, the Commission opines that since the assets under consideration have been planned and installed based on the requirements of the long term users, therefore the benefits should be passed on to the long term customers. Accordingly, the phrase “beneficiaries” has been substituted by the phrase “long term customers” in the Draft Regulations.

5. Regulation 4. Intimation of other business

5.1. Based on the existing scope of the Current Regulations, a transmission licensee is obligated to provide prior intimation to the Commission. In order to facilitate the Commission to enquire about the nature and manner of business and to issue appropriate directions, it is proposed that a transmission licensee may seek approval by filing an appropriate petition. Accordingly, clause (1) of Regulation 4 of the draft Regulations is proposed.

5.2. Scope of submission of information to be provided by the transmission licensee proposing to undertake other business has been expanded to include an estimation of relevant direct and indirect costs towards such other business. Accordingly, sub-clause (f) of clause (2) of Regulation 4 has been added.

5.3. The 2007 regulations specify that transmission licensees undertaking other business are required to submit information pertinent to such other business on a half yearly basis. These regulations have

been simplified and merged together in the clause (3) of Regulation 4 of the Draft Regulations.

6. Regulation 5. Manner of sharing of revenue

(1) Telecom Business:

6.1. The Commission has observed that over the period, cost of Optical Ground Wire (OPGW) is being shared between telecom and transmission business by the Central Transmission Licensee (PowerGrid Corporation of India). Therefore, a benefit of cost sharing by telecom business gets directly passed on to the beneficiaries through reduced transmission tariff determined by the Commission. There is corresponding benefit to telecom business also as it is not required to bear the entire cost of OPGW.

6.2. Since introduction of new businesses increases optimal utilization of transmission assets leading to reduction in the burden of the transmission cost, it is desirable to encourage the growth of such business. This will further encourage the transmission companies to explore such opportunities towards utilisation of existing resources to maximise revenue from other business, without affecting grid security.

6.3. In order to assess savings due to use of transmission infrastructure, the comparison of cost of normal Telecom business by Telecom network provider with the laying of Telecom line by the Transmission licensee has been considered. The cost of laying optical ground wire by a telecom network provider without using the transmission infrastructure is estimated to be in the range of Rs. 3.25 - 3.50 lakhs per km. It is observed that the cost of laying optical ground wire with transmission network is estimated to be in the range of Rs. 1.75 lakhs to Rs. 2.00 lakhs per Km. Accordingly, the savings to telecom business works out to be of the order of Rs 1.5 lakhs/km. Thus, the estimated total savings in Capital Cost for approximately 33403 KM of optical ground wire of the largest transmission licensee (PowerGrid Corporation of India) is Rs 501 Crores. Therefore, the total fixed assets of Telecom business including savings in

capital cost is worked out as Rs 1420.4 Crores i.e. sum of Rs 919.35 Cr gross fixed assets of 2017-18 as per audited accounts and Rs 501 Crores estimated savings as above. Against this fixed assets of Rs 1420.40 Cr, the net revenue surplus for 2017-18 was Rs. 314.41 Crores i.e. 22.13% of total fixed assets including saving in capital cost to telecom business. Accordingly, contribution of transmission assets towards net revenue surplus works out to approximately Rs 110.9 Crores. (Rs 501.05 *22.13%=110.9 Cr).

6.4. For Powergrid Corporation of India Ltd., out of total length of Telecom line of 53168 Km, the length of OPGW laid using the transmission infrastructure is 33403 Km (approximately 60%) and balance 19765 Km is laid underground. Hence, the net revenue surplus amount of Rs 110.90 Cr is to be shared in proportion to the overhead transmission line i.e. $60\% \times \text{Rs } 110.90 = \text{Rs } 66.54 \text{ Cr}$, which is 9.81% of the gross revenue of Rs 678 Cr of the Telecom business. Accordingly, the Commission is of the view that it will be reasonable to share 10% of Gross Revenue with the long term customers.

(2) Other Business other than Telecom Business:

6.5. In case, the other business is a business other than telecom, existing provision of determination of such proportion for share on a case to case basis is proposed to be continued, which shall be determined based on the submission of relevant information as specified in draft Regulation.

7. Regulation 7. Maintenance of accounts

7.1. The Commission is of the view that sufficient checks and balances need to be put into place for proper reporting and declaration of revenue from such other business. Therefore, it is proposed to mandate separate accounts and accordingly, the Draft Regulations (7) is proposed.

8. Regulation 8. Restrictions

8.1. In order to safeguard the interest of the long term customers, it is proposed to put reasonable restriction through the Draft Regulation 8.

Summary of comments and suggestions received from the stakeholders in response to the consultation paper are as follows:

- a) Some stakeholders have suggested that the revenue earned from telecom business should be reviewed since the telecom sector itself has gone under numerous changes and Digital India push to be explored to minimize the transmission cost of Distribution Companies;
- b) Some stakeholders have suggested that all profits earned from telecom business should be shared with Distribution companies in ratio of 1:2 wherein 1/3rd of the profits should be retained by the Transmission Licensees while the remaining 2/3rd should be passed on to the Distribution Companies;
- c) One stakeholder has suggested that revenue from Telecom business must be shared in accordance with Section 41 of Electricity Act, 2003 instead of a fixed rate as per the current regulations;
- d) It has also been suggested that third party audit must be conducted to determine the actual gain accrued to Powergrid through utilization of transmission assets for telecom business. These gains should be passed on to the long term customers;
- e) Some stakeholders have submitted that non-tariff income from telecom business must be shared equally with the long term customers subject to a minimum of Rs.20,000/km;
- f) The transmission licensees have submitted that the entire risk of other businesses is borne by the transmission licensees while the consumers are immune to such risk in a competitive market like the Telecom industry wherein no downside in such ventures is shared with the consumers.